

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C20-1574-BAT

**ORDER REVERSING AND
REMANDING FOR FURTHER
PROCEEDINGS**

Plaintiff appeals the ALJ's decision finding her not disabled for the closed period between November 25, 2014 and July 1, 2018. She contends the ALJ erred at step two by failing to find chronic neuropathic pain, Carpal Tunnel Syndrome (CTS), and bilateral knee impairment are severe impairments, and by miscalculating her testimony. For the reasons below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

DISCUSSION

A. Step Two

Plaintiff argues the ALJ's failure to find neuropathic pain and bilateral CTS are severe impairments is reversible error. Dkt. 22 at 13. Step two error is harmless if the ALJ considered an impairments attendant limitations in determining a claimant's residual functional capacity. *See*

1 *Rice v. Saul*, 817 Fed. Appx. 395, 397 (9th Cir. 2020); *Lewis v. Astrue*, 498 F.3d 909, 911 (9th
2 Cir. 2007)). Here, following step two, the ALJ considered and rejected Plaintiff's pain
3 complaints; any error at step two regarding pain complaints is thus not grounds to reverse the
4 Commissioner's final decision. Tr. 23-24. However, as discussed below, because the ALJ
5 misevaluated Plaintiff's pain complaints, her complaints must be reassessed on remand.
6 Similarly, because the ALJ failed to consider CTS at step two or in any of the subsequent steps,
7 the ALJ on remand must reassess the impact of CTS on Plaintiff's ability to perform gainful
8 work activity.

9 **B. Plaintiff's Testimony**

10 Plaintiff contends the ALJ erroneously discounted her testimony that her pain limited her
11 ability to sit, stand and walk for more than one hour and that her CTS limited her reaching and
12 handling ability. Dkt. 22 at 14. Plaintiff argues the ALJ erred by applying the wrong standard at
13 step two. But a step two error does not automatically mean the ALJ erred in discounting
14 Plaintiff's testimony and the Court thus rejects this argument.

15 Plaintiff also argues the ALJ erred by misstating the evidence regarding her CTS. The
16 ALJ discounted Plaintiff's upper extremity complaints finding Plaintiff's electrodiagnostic studies
17 showed "mild abnormalities." Tr. 24. The ALJ's reading of the record is selective. It focuses on
18 the portion of the record showing mild concurrent ulnar neuropathy and disregards other portions
19 showing "[o]verall the bilateral carpal tunnel syndrome appear moderate in degree, greater right
20 than left." Tr. 713. In fact, the ALJ failed to mention carpal tunnel syndrome at both step two and
21 in assessing Plaintiff's residual functional capacity (RFC). The failure is harmful as it results in a
22 RFC determination that fails to account for all of Plaintiff's conditions and limitations.

1 Plaintiff further argues the ALJ erred in rejecting her chronic pain complaints by focusing
2 on parts of the record showing her pain improved with treatment and ignoring other evidence
3 showing the improvements were temporary. Dkt. 22 at 17. The ALJ found Plaintiff's pain
4 improved noting a March 2016 epidural injection improved Plaintiff's pain 50%. Tr. 24. The
5 March record does indicate Plaintiff's pain improved 50% but it also states Plaintiff "rates her
6 pain 7/10. Low back really bothersome. Left hip pain. Right foot pain." Tr. 876.

7 The ALJ also found a December 2015 record noted an epidural injection improved
8 Plaintiff's pain 70%. Tr. 24. But that record also indicates Plaintiff stated her pain level was 8/10
9 and that she has left foot pain and "aching pain in foot starts laterally and extends globally." Tr.
10 881.

11 The ALJ also noted records from April 2017 showed nerve ablation and steroid injections
12 provided plaintiff pain relief. Tr. 24. However, that set of records shows Plaintiff was seen on
13 April 4, 2017 with complaints of upper back pain, radiating pain and pain that worsened when
14 sitting, standing and bending. Tr. 1054. Plaintiff indicated her prior injections were helpful but
15 the fact she stated she was still in pain in 2017 indicates the relief obtained was temporary. She
16 also indicated the ablation improved her pain 30% and the epidural injections helped 50%. Tr.
17 1056.

18 In June 2017, Plaintiff was seen for a follow-up examination. She reported discomfort in
19 the upper, mid and lower spine, pain radiating to her buttocks, pain in her hips, shoulders, upper
20 extremity and thighs and calf. The medical report noted "This is a chronic problem with essential
21 constant pain." Tr. 1057. In short, the record shows the pain relief Plaintiff obtained from
22 treatment was helpful but for short periods of time. Plaintiff gained some relief from treatment in
23 2015 yet in 2017, her doctors still noted she suffers from chronic constant pain. Substantial

1 On remand, the ALJ shall consider CTS and reassess Plaintiff's testimony, develop the
2 record and redetermine Plaintiff's RFC as needed, and proceed to the remaining steps as
3 appropriate.

4 DATED this 11th day of August 2021.

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7 BRIAN A. TSUCHIDA
United States Magistrate Judge
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